

C. Recognition and Enforcement of Arbitral Awards

The earlier discussion of the jurisdiction of arbitration tribunals over commercial disputes noted that inconsistencies in the several legal acts which regulate this matter make a clear definition of the rules difficult.⁴² This is equally true with respect to the legal rules concerning the enforcement of the decisions of arbitration bodies. Differing rules apply to arbitral awards issued by foreign tribunals and by Russian domestic tribunals in “domestic” matters, and there is a particular lack of legislative clarity concerning arbitral awards issued by Russian arbitration tribunals in cases in which an “international element” — a foreign party or enterprise with foreign investments — is present.

⁴² The three legal provisions governing arbitration and the process by which confusion among them has arisen are discussed in Chapter 2, Section D.1. of this Handbook.

1. Arbitral Awards of Russian Arbitration Tribunals Concerning Domestic Disputes

a) Applicable Law

The activity of Russian arbitration tribunals in resolving domestic disputes (i.e., those not involving foreign parties or interests) is governed generally by the provisions of the Temporary Statute on Arbitration Tribunals for the Resolution of Economic Disputes (hereinafter the Temporary Statute)⁴³ and the Statute on the Arbitration Court which appears as Appendix No. 3 to the Civil Procedure Code. The Temporary Statute governs arbitration of disputes subject to the jurisdiction of the arbitrazh courts, while Appendix No. 3 applies to arbitration of disputes subject to the courts of general jurisdiction.

b) Enforcement Under the Temporary Statute

The provisions of the Temporary Statute concerning the execution of the awards of arbitration tribunals state that the decisions of arbitration tribunals are to be executed voluntarily within the period and through the procedures established in the decision. If no period for execution is stated in the decision, it is to be executed immediately. If the decision is not executed voluntarily within the period stated in the decision, the party in whose favor the decision was issued may submit a petition for an order on the execution of the decision to the permanent arbitration tribunal where the case materials are stored or to the arbitrazh court in the place where the arbitration tribunal is located. Such a petition must be made within a month of the expiration of the period for voluntary execution. If the petition is filed with the permanent arbitration tribunal, that tribunal must within five days of its receipt send it to the arbitrazh court which is competent to issue an execution order.

The petition must have as appendices documents confirming the failure to execute the decision and evidence of the payment of the filing fee for the arbitrazh court. If the petition is submitted after the expiration of the one month period or without proper documentation, it will be returned by the arbitrazh court without consideration. The arbitrazh court may, however, renew the period for the submission of the petition if the filing was missed for a sufficient reason.

A petition is to be considered by one judge within a one month period of its receipt by the arbitrazh court. The arbitrazh court may refuse the issuance of an execution order if the arbitration tribunal violated procedural rules, such as:

- ✗** the parties did not agree to consideration of the dispute by an arbitration tribunal;
- ✗** the composition of the tribunal or the procedure for consideration was not in accord with the agreement of the parties;

⁴³ Temporary Statute on Arbitration Tribunals for the Resolution of Economic Disputes, confirmed by Decree of the Supreme Soviet of the Russian Federation, Vedomosti S'ezda Narodnykh Deputatov i Verkhovnogo Soveta RF [News of the Congress of People's Deputies and the Supreme Soviet of the Russian Federation], 1992, No. 30, Item 1790.

- ✗ the party against which the decision was issued was not properly informed of the day of consideration of the case in the arbitration tribunal or for another reason was not able to present its explanations; or
- ✗ the dispute arose in the sphere of administrative relations with a state body or was otherwise not legally subject to consideration in an arbitration tribunal.

In addition to the procedural grounds for refusal of execution, the Temporary Statute allows the arbitrazh court to review the decision of the arbitration tribunal in its substance. According to its Article 26, if the arbitrazh court finds during its consideration of the petition that the decision of the arbitration tribunal is not in accord with the substantive law or was taken without proper consideration of the materials of the case, the arbitrazh court must return the case to the arbitration tribunal which issued the decision for a new consideration. These provisions effectively permit the substantive review of the case by the arbitrazh court. If it is not possible for the same arbitration tribunal to consider the case, the claim may be submitted to an arbitrazh court in accordance with the general rules concerning jurisdiction and venue.

The arbitrazh court issues a determination on its consideration of the petition, either granting or refusing an execution order. The determination may be appealed through the general procedures for appeal established by the APC, including those applying to cassational appeal and supervisory review. A sample petition for the enforcement of an arbitration award issued in a “domestic” commercial dispute, and the arbitrazh court’s determination on that petition, appear as Appendix R to the Handbook.

c) Enforcement Under Appendix No. 3 to the CPC

Appendix No. 3 to the CPC states that a decision of an arbitration tribunal which is not executed voluntarily may be enforced through the issuance of an execution order by a court. In issuing the execution order, the court is to verify that the decision of the arbitration tribunal does not violate the law and that the rules contained in Appendix No. 3 concerning procedures in the arbitration tribunal were not violated in the issuance of the decision. A refusal by the court to issue an execution order may be appealed within a 10 day period after its issuance. After a court’s refusal to order the execution of an arbitral award has entered into legal force, the dispute may be submitted to a court for resolution.

2. International Commercial Arbitration Outside Russia

With respect to awards issued by arbitration tribunals outside the Russian Federation, **recognition and enforcement are governed by the terms of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards**,⁴⁴ to which Russia is a party.⁴⁵ The grounds envisioned in the New York Convention for the refusal to recognize an award or to enforce it are:

⁴⁴ Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 21 UST 2517, TIAS 6997, 330 UNTS.

⁴⁵ Russia became a party to the Convention upon the dissolution of the Soviet Union in 1991.

- ✗ one of the parties to the arbitration agreement did not have legal capacity or the agreement itself was void by the applicable law, or if the applicable law is not stated by the law of the place of the arbitration;
- ✗ the party challenging the award was not properly notified of the appointment of an arbitrator or of the consideration by the tribunal or for another reason was not able to present its case;
- ✗ the award was issued concerning a dispute not subject to the arbitration agreement (but if this affects only a part of the award and the terms are separable, then only the part outside the agreement will not be recognized);
- ✗ the composition of the arbitration tribunal or the arbitration procedure was not in accord with the agreement of the parties, or was not in accordance with the law of the place of the arbitration;
- ✗ the award has not yet become binding on the parties or has been reversed or suspended by a competent court.

In addition, a court may refuse to enforce an arbitral award if the matter in dispute is not subject to arbitration under the law of the country in which enforcement is sought, or its enforcement would violate the public policy of that country.⁴⁶ The New York Convention is implemented by the 1993 Law “On International Commercial Arbitration” and Articles 35 and 36 of that law define the conditions for enforcement of foreign arbitral awards, repeating the provisions of the Convention listed here.

3. International Commercial Arbitration Awards Issued in the Russian Federation

a) Applicable Law

It is this category of arbitration proceedings and arbitral awards that gives rise to confusion concerning the applicable law and the procedures for securing enforcement of an arbitral award. The confusion is caused by the fact that two different pieces of legislation sometimes appear to apply to the same dispute. The Temporary Statute, by its terms, applies to arbitration of disputes which would otherwise be subject to the jurisdiction of the arbitrazh courts. The jurisdiction of the arbitrazh courts includes disputes involving foreign parties which meet the other criteria for arbitrazh court jurisdiction. Thus, the arbitration of international commercial disputes which would otherwise be subject to the jurisdiction of the arbitrazh courts would seem to be governed by the Temporary Statute. The clear exception to this is disputes which are arbitrated at the long-established International Commercial Arbitration Court (ICAC) or the Maritime Arbitration Commission (MAC), which are specifically exempted from the effect of the Temporary Statute.

⁴⁶ Grounds for reversal of an arbitral award or the refusal of execution appear in Article V of the New York Convention.

At the same time, there is a Law of the Russian Federation “On International Commercial Arbitration,”⁴⁷ “which applies generally to arbitration of international commercial disputes in the Russian Federation, without distinguishing among them on the basis of the court in which they would be heard if they were not arbitrated. The rules contained in the 1993 Law and in the Temporary Statute differ significantly, however, and most international commercial disputes which are subject to arbitration would fall into the jurisdiction of the arbitrazh courts if they were not arbitrated. The determination concerning which of these legal acts applies will define which court has the authority to enforce an award and what the powers of the court and procedures for enforcement will be.”⁴⁸

One of the means to resolve this apparent overlap in jurisdiction is a strict reading of the first article of the Temporary Statute, which provides that the Temporary Statute will not apply to disputes where a party is located abroad or where a party is an organization with foreign investment unless the parties to the dispute agree otherwise. If strictly applied, this article would eliminate the application of the Temporary Statute to any international commercial dispute except those in which the parties had specifically agreed upon its use.⁴⁹ This interpretation is not, however, universally accepted and there may be disagreements among courts concerning jurisdiction over the enforcement of arbitral awards issued by Russian arbitration bodies in cases concerning international commercial matters and the rules governing the enforcement of those awards.

b) Standards for Enforcement Under the 1993 Law “On International Commercial Arbitration”

The 1993 Law was in large part intended to implement the New York Convention. Articles 35 and 36 of the Law state the grounds for refusal of recognition or enforcement of a foreign arbitral award that are listed above in Section C.2. of this chapter. Article 34 of the Law states the grounds on which reversal of an arbitral award concerning international commercial matters *issued in the Russian Federation* may be sought in court, specifically:

- ✗ one of the parties to the arbitration agreement did not have legal capacity or the agreement itself was void by the applicable law, or if the applicable law is not stated by the law of the Russian Federation;

⁴⁷ Law of the Russian Federation “On International Commercial Arbitration,” *Vedomosti S’ezda Narodnykh Deputatov Rossiskoi Federatsii i Verkhovnogo Soveta Rossiskoi Federatsii*, 1993, No. 32, Item 1240.

⁴⁸ The confusion over the scope of application of these provisions is a result of changes that have occurred since the time of their passage. When the two acts discussed were adopted, the arbitrazh courts had no jurisdiction over cases concerning international commercial matters, and the only arbitration tribunals hearing such matters were those specifically excluded from the scope of application of the Temporary Statute. In the intervening period, the arbitrazh courts have been given general jurisdiction over most international commercial disputes and many new arbitration tribunals have been formed and are hearing disputes concerning such matters.

⁴⁹ Even in instances of agreement, however, the application of the rules of the Temporary Statute concerning enforcement of arbitral awards by courts to cases concerning international commercial arbitration may still raise difficult issues, as the grounds provided by the statute for refusal of enforcement of an award are not entirely consistent with those envisioned in the New York Convention

- ✗ the party challenging the award was not properly notified of the appointment of an arbiter or of the consideration by the tribunal or for another reason was not able to present its explanations;
- ✗ the award was issued concerning a dispute not subject to the arbitration agreement; or
- ✗ the composition of the arbitration tribunal or the arbitration procedure was not in accord with the agreement of the parties, if they could have legally agreed on those issues under the 1993 Law, or was not in accordance with the law.

In addition, the award may also be reversed by a court on the grounds that the object of the dispute may not be the subject of arbitration according to the law of the Russian Federation or that the award violates the public policy of the Russian Federation.

These grounds are identical to those provided by the New York Convention as grounds for refusal to enforce a foreign award, with the exclusion of the ground that the award is not yet binding or has been suspended or reversed. Thus, the primary difference between the enforcement of arbitral awards concerning international commercial arbitration issued outside the Russian Federation and those issued inside the Russian Federation is that those issued inside the Russian Federation may be *reversed* by a Russian court under certain circumstances, while the same circumstances with respect to a foreign arbitral award may lead only to a *refusal to recognize and enforce* the award. This leaves open the possibility, in relation to arbitral awards issued inside the Russian Federation, for reconsideration by a Russian arbitration tribunal where the defect which led to the reversal is one that can be cured in a new arbitration proceeding (e.g. failure to properly notify a party or procedural problems).

c) Standards for Enforcement Under the Temporary Statute

Where enforcement of an arbitral award concerning an international commercial matter takes place under the Temporary Statute, the rules and procedures discussed above in Section C.1(a) of this chapter will apply.

4. Where and How to File

a) Requests for Enforcement Under Appendix No. 3

A request for enforcement of an arbitral award in a case that would otherwise have been subject to resolution in the courts of general jurisdiction must be sought from the first-level court (the regional or city court) in the area where the arbitration procedure took place. The records of arbitration proceedings in such cases are to be forwarded to this court for storage after the arbitration has been completed. A decision refusing to issue an execution order may be appealed within ten days of issuance. After a decision refusing an execution order has entered into force (which occurs either when no appeal was filed within the available period or after the appeal decision is issued), a party in the

case may file a petition for the resolution of the same dispute in the appropriate court of general jurisdiction.

b) Request for Enforcement Under the Temporary Statute

The Temporary Statute provides that execution orders are to be issued by the arbitrazh court of the first instance in which the arbitration tribunal issuing the award is located. A petition must be submitted within a month of the expiration of the period stated in the award for voluntary execution, or within a month of the day after the issuance of the award. The arbitrazh court has the authority to reestablish the period for filing if a good reason is shown for having missed the deadline. If the arbitral award in question was issued by a permanent arbitration tribunal, the request is made by submission of the petition to the tribunal, which must forward it within five days, together with the record of the proceedings, to the appropriate arbitrazh court. If the arbitral award was issued by an ad hoc tribunal, the petition is submitted directly to the arbitration court. The petition is to be considered by a single judge within a one month period of its receipt, and a determination issued on issuance or refusal of the execution order.

c) Request for Enforcement of Decisions Issued in International Commercial Arbitration Processes

The question concerning which court is appropriate for the filing of a petition for enforcement in a case involving international commercial arbitration is not resolved by the 1993 Law, which only states that the petition should be filed in the “competent” court. With respect to the decisions of arbitration tribunals located outside the Russian Federation, the 1988 Edict on enforcement of foreign judgments and arbitral awards, discussed in Section B of this Chapter with respect to the enforcement of foreign court decisions, states that the petition should be filed in the highest (supreme) court in the subject of the Federation (republic, oblast, krai) in which the execution is being sought. As discussed above, the 1988 Edict was passed before the creation of the arbitrazh courts and so does not distinguish between the arbitrazh courts and the courts of general jurisdiction. The same confusion discussed in Section B with respect to the “competent court” for the enforcement of foreign judgments exists also with respect to the competent court for the enforcement of foreign arbitral awards. If foreign arbitral awards are equated with foreign court decisions and their enforcement is considered to be within the definition of “legal assistance” under Article 215 of the APC, then the analysis currently accepted by the arbitrazh courts and discussed in Section B, under which the arbitrazh courts have “alternative jurisdiction,” together with the courts of general jurisdiction, over enforcement of foreign court judgments, applies equally to the enforcement of foreign arbitral awards.

A special question exists with respect to the enforcement of arbitral awards, however, that does not arise with respect to enforcement of court decisions. Court decisions are either issued by foreign courts or by domestic courts. Arbitral awards, however, may be issued in “international” cases by arbitration tribunals located within the Russian Federation. This raises the question of the definition of the “competent” court

with respect to enforcement of an award issued in international commercial arbitration proceeding that takes place in the Russian Federation.

Traditionally, the courts of general jurisdiction enforced the decisions of the ICAC and MAC during the many decades in which these were the only existing international arbitration tribunals within the USSR. This practice continues in the present, and the decisions of those bodies are usually submitted to a court of general jurisdiction for the issuance of an execution order. Article 339 of the Civil Procedure Code, applied by the courts of general jurisdiction, includes decisions of the ICAC and the MAC in its list of documents on the basis of which an execution order may be issued. The specific court to which a petition is submitted has changed a number of times over the years, including the local court of the first level located at the place of the arbitration tribunal, the second-instance court (the Moscow city court of general jurisdiction), and the first instance court at the place of location of the respondent. At the present time, petitions are being accepted by the Moscow city court of general jurisdiction. However, the practice of submission of such petitions to this court is not an exclusive one, and there have been instances in which a petition for the issuance of an execution order based on a decision of the ICAC has been submitted to the Moscow arbitrazh court (the first instance arbitrazh court) and an execution order has been issued by that court.

With respect to the decisions of other arbitration tribunals in the Russian Federation which hear both “domestic” and international matters, there is some confusion concerning jurisdiction to issue execution orders. A conclusion that the courts of general jurisdiction are the proper courts for such cases can be based upon the provisions of the CPC generally authorizing issuance of execution orders on the basis of arbitral decisions. A conclusion that the arbitrazh courts have jurisdiction over such cases may be based on one of several possible legal analysis. One analysis relies on the language of the Temporary Statute concerning its application to all cases within arbitrazh jurisdiction (including, since 1995, cases involving foreign parties). Another would interpret the 1993 Law’s reference to the “competent” court to mean the court otherwise competent to hear the underlying dispute if it were brought in a domestic court. In the alternative, the arbitrazh courts could be considered to be competent to issue enforcement orders in such cases on the basis of the same analysis presented in Section B of this Chapter concerning foreign court decisions, treating “international” awards issued by domestic arbitral tribunals as “foreign” for the purposes of the analysis. Practice in the submission and consideration of such cases is not completely consistent. The arbitrazh courts acknowledge jurisdiction over such cases, provided they would be within the jurisdiction of the courts if heard initially. Courts of general jurisdiction have in some instances transferred cases to the arbitrazh court or refused the case and advised the party seeking enforcement to do so. In other instances, however, the courts of general jurisdiction have accepted the relevant petitions and considered the case.

The lack of clarity in the legislation creates some serious questions about differing treatment of petitions for execution orders. If the arbitrazh courts apply the Temporary Statute in considering a petition for an execution order, they may conclude that they are to review the decision of the arbitral tribunal in substance, to determine whether the decision

is legal and was based on due consideration of all of the factual circumstances. The courts of general jurisdiction, however, if applying the 1993 Law, would conclude that they may not review the substance of the arbitral decision and may only reverse or refuse execution on the grounds stated in the Law. A different question of differential treatment may arise between international cases decided by a foreign arbitration tribunal and those decided by an arbitration tribunal within the Russian Federation, due to the differing time limitation on the execution of a resulting order. (See below.) These questions may be resolved by the new APC and CPC and/or by legislation on arbitration, but until this occurs it is important for parties to a dispute to be aware of the issues. There have been some cases in which foreign parties relied on needs to be resolved through legislative clarification or conclusive interpretation by the highest courts in the two court systems.

5. Limitations Periods for Enforcement

The 1993 Law does not specify any time limitation on the submission of a petition for the enforcement of an award from an international commercial arbitration tribunal. With respect to execution of an order enforcing the award once it is received, the limitation stated in the Civil Procedure Code and repeated in the 1988 Edict is three years.

The 1997 Law on Execution does not appear to contain a limitation period applicable to execution orders based on a decision of a foreign arbitration tribunal. In defining execution documents, that law (Article 7) lists as two separate categories execution orders issued (a) on the basis of decisions of foreign courts and arbitration tribunals, and (b) on the basis of decisions of the International Commercial Arbitration or other arbitration tribunals. Although the reference to “International Commercial Arbitration” uses the term “arbitrazh” for arbitration tribunal rather than “arbitrazhnyi sud” or “arbitrazh court” — the reference is singular and capitalized and appears to refer to the International Commercial Arbitration Court (ICAQ) discussed above. In defining the periods for presentation of execution orders, the same law (Article 14) provides a six month period for orders issued on the basis of decisions of the ICAC or of other arbitration tribunals, which appears to be applicable to orders enforcing awards issued by these tribunals, whether issued by the courts of general jurisdiction or by an arbitrazh court.

The 1997 Law on Execution, however, provides no period for the presentation of execution orders based on the decisions of foreign courts or arbitration tribunals. In the absence of such a period, the periods defined by the CPC and the 1988 Edict of three years would seem to apply to these orders. This differentiation in time periods, however, would seem to subject awards in international commercial arbitration to very different execution periods, depending upon whether they were issued within the Russian Federation or by a tribunal outside the Russian Federation. In the alternative, the general periods for presentation of orders based on acts of the arbitrazh courts (six months) and of the courts of general jurisdiction (three years) could be applied, but this would result in very different periods for the enforcement of foreign arbitral awards depending upon which court issued the execution order. Confusion about the applicable limitation has in some instances caused foreign parties to fail to present execution orders within the required periods and thereby to lose their opportunity to enforce an arbitral award. Until

this matter is more clearly resolved by legislation, parties to disputes should be extremely careful about limitations periods on execution orders and would be well advised to obtain and present such orders for execution as early as possible.

6. Security for the Execution of the Judgment

Provisional measures for security of the claim during arbitration are provided for by the rules of a number of the arbitration tribunals that are competent to issue awards in cases concerning foreign economic matters, and the ICAC, for example, reports an increasing number of requests for provisional security in recent years. Such measures will usually be ordered by an arbitration tribunal only if the respondent, against whom the security measures are sought, can be shown to be acting in a manner that is likely to damage its ability to meet an award (e.g. selling principle assets). The party seeking the security may be required to give a return security for damages caused by measures of restraint, should the seeking party lose the case before the arbitration tribunal. All measures of restraint which are ordered by the arbitration tribunal hearing the case (or by the official of the tribunal authorized to do so) are to be implemented voluntarily by the parties. If a party does not voluntarily implement the security measures, the party seeking the measures must seek their enforcement through the courts, using the same procedures discussed above for security of a suit and the enforcement of court decisions generally.

There is a lack of detailed legal regulation in this area, and the kinds of questions discussed above concerning the competent court for enforcement of an arbitral award exist also in relation to orders for interim security measures. The language of Article 9 of the 1993 Law on International Commercial Arbitration states that “recourse of the parties to a court prior to or during the consideration by the arbitration tribunal with a request that measures be taken to secure the suit and the issuance by the court of a determination on the taking of such measures shall be compatible with the arbitration agreement.” The language of this provision clearly suggests that parties may be able to make recourse to a court for security of the claim during the arbitration process. Neither the CPC, passed prior to the issuance of the 1993 Law, nor the APC, passed two years thereafter, however, contains language specifically relating to security for an arbitral award. The general provisions of both codes concerning security for a suit during its consideration state that the petition is to be considered by the same court considering the dispute itself, leaving it at a minimum uncertain where a petition for security during consideration by an arbitration tribunal should be heard. Nor does the draft of the new Law “On Arbitration Tribunals in the Russian Federation” available at the time of writing provide any clarity in this respect. It states only that an arbitration tribunal shall have the right to instruct parties to take measures securing the claim, and does not address in any provision the means for enforcement of such measures, if they are not implemented voluntarily.⁵⁰

⁵⁰ The provisions of the draft relating to enforcement of arbitral awards would not appear to apply at all to the enforcement of measures for security, as the provisions concern only the court enforcement of the “decision” of an arbitration tribunal. The article concerning interim security measures refers to the arbitration tribunal’s ability to “order” such measures. There are no provisions in the law concerning the mandatory enforcement of the “orders” of an arbitration tribunal, and without such the provisions would normally be interpreted not to apply to such orders.